



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CROSSROADS ENT. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on January 6, 2017. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause.

The hearing was conducted via teleconference and was attended by the Landlord; the Tenant; the Tenant's Agent; and the Tenant's witness (the Witness). Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord acknowledged receipt of the application; Notice of hearing documents; and the evidence served by the Tenant. The Landlord stated they did not submit documentary evidence in response to the Tenant's application and no issues regarding service or receipt of the Tenant's documents were raised. As such, I accepted the relevant submissions from the Tenant as evidence for these proceedings.

Each party was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice issued December 28, 2016 be upheld or cancelled?

Background and Evidence

The undisputed evidence was the Tenant entered into a month to month tenancy that began on May 22, 2015. Rent of \$700.00 is due on or before the first of each month and on May 22, 2015 the security deposit of \$350.00 was paid on behalf of the Tenant.

The rental unit is an apartment located on the top floor of a three floor building with approximately 90 rental units. The building is wood framed and was described as being an older building. The assistant manager resides in the building.

A 1 Month Notice was posted to the Tenant's door on December 28, 2016, pursuant to Section 47(1) of the Act, listing an effective date of January 30, 2017 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.

In support of the reasons for issuing the Notice the Landlord testified that for approximately one year she has been receiving noise complaints from the Tenant who resides in the unit directly below this Tenant. After receiving another complaint and information there was a police file created she decided to issue the Tenant a 1 Month Notice to end the tenancy.

The Witness testified he attended the Tenant's rental unit on Christmas Eve at approximately 9:00 p.m. with a one week old baby. He said they went out for dinner and were back in the Tenant's rental unit around 1:00 a.m. He asserted the noise was simply the baby crying. The Witness stated the tenant from the unit below started banging on the ceiling when the baby was crying.

The Agent was given the opportunity to question the Landlord during which I heard the Landlord state the following: she had never attended the Tenant's rental unit during a time when there had allegedly been noise; the noise complaints came from the same tenant below this Tenant; the complaints were never verified by the assistant manager or anyone else in the building prior to the issuance of the Notice; and the Landlord was of the opinion the complaints from the lower tenant were good enough to issue the eviction Notice. The Landlord argued that one of the support letters submitted into evidence was forged.

The Agent testified he was with the Tenant on Christmas Eve when the police attended to the noise complaint. He stated the police arrived and found the one week old baby crying and told the Tenants to simply do their best to comfort the baby. The Agent stated they were not in the Tenant's apartment on Christmas day as they had left by 10:00 a.m. and did not return until 1:00 a.m.

The Agent spoke about the alleged forged letter and stated that person told the Tenant he could write the letter on his behalf so it was not a forgery.

The Tenant submitted that he has had resided in the building for three years and has only received complaints from the lower tenant. He stated the lower tenant is making up accusations because he is touchy when the Tenant walks on the floor because it

squeaks. The Tenant submitted he has attempted to talk with the lower tenant about the issue; however, he cannot do anything about the floor because it is a squeaky floor.

In closing, the Landlord stated the complaints were not only received at Christmas time, they were received throughout the entire year.

Analysis

Upon review of the 1 Month Notice to End Tenancy issued December 28, 2016, I find the Notice to be completed on the prescribed form. The effective date would have automatically corrected to be January 31, 2017 in accordance with section 53 of the *Act*.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

In this case, the Landlord's evidence which involved noise complaints prior to the issuance of the Notice which were received from only one tenant over a period of one year. During the last year the Landlord has taken no formal action by conducting an investigation; by attending the Tenant's rental unit during a period of alleged noise; or by way of issuing the Tenant formal written warnings.

When tenants occupy a multi-unit wood framed building there are normal sounds or noises that are generated from day to day living which can be heard throughout the building at all hours of the day or night; which all tenants have to deal with. There is also an expectation that tenants compromise when other tenants have family and or friend over occasionally, around birthdays, or holidays.

Based on the above, I find the Landlord is estopped from evicting the Tenant at this time. I make this finding in part because the alleged inappropriate behaviors have been allowed to go on, seemingly unmanaged for 12 months. It was not until recently that those behaviors became a real issue for the Landlord and that is only because the Landlord was told the police were called. There was insufficient evidence before me to substantiate that the police made any findings against the Tenant. Rather, I accept the Agent's submissions that when the police arrived the noise was being caused by a baby crying. Accordingly, I uphold the Tenant's application and I cancel the 1 Month Notice to end tenancy issued December 28, 2016. The tenancy continues until such time as it ends in accordance with the *Act*.

I caution the Tenant that if the other allegations relating to noise or his guests coming and going late at night disturbing other tenants is verified or proven by the Landlord in

the future, the record of this decision may form part of the Landlord's case should it again come before an Arbitrator for consideration.

Conclusion

The Tenant was successful with his application and the 1 Month Notice issued December 28, 2016 was cancelled.

This decision is final, legally binding, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 01, 2017

Residential Tenancy Branch